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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1945**

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# No. 707

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THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

*Appellant,*

*vs.*

L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA

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APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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## MOTION TO DISMISS OR AFFIRM

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JOHN M. DANIEL,
*Attorney General of South Carolina,*
M. J. HOUGH,
T. C. CALLISON,
*Assistant Attorneys General of South Carolina,*
*Counsel for Appellee.*

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IN THE

# SUPREME COURT OF THE UNITED STATES

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## No. 707

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THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A CORPORATION,

*Appellant,*

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L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA,

*Appellee*

---

## MOTION TO DISMISS OR AFFIRM

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Pursuant to the provisions of Rule 7 and of Rule 12 of the Supreme Court of the United States, L. George Benjamin, as Insurance Commissioner of the State of South Carolina, the Appellee moves the Court to dismiss this appeal or in the alternative to affirm the judgment of the South Carolina Supreme Court (*Prudential* v. *D. D. Murphy, Insurance Commission*, — S. C. —, 35 S. E. (2d) 586) upon the ground that the questions on which the decision of the cause depend are so unsubstantial as not to need further argument because:

I

The Appellant has failed to show that the tax laws of South Carolina unfairly discriminate against foreign insurance companies:

II

The South Carolina premium tax levied under Sections 7948-7949 of the Code of 1942 is levied against an intrastate activity of the Appellant:

III

Even if the South Carolina premium tax discriminates against foreign insurance companies it does not contravene the "due process" or "equal protection" clause of the Fourteenth Amendment to the Federal Constitution:

IV

Any burden imposed on interstate commerce by Sections 7948-7949 of the Code of 1942 is authorized by the Congress (Public Law 15, 79th Congress, Chapter 20, 1st Session, 59 Stat. 33, 15 U. S. C. A. 1011-1015):

V

Public Law 15, 79th Congress, Chapter 20, 1st Session 59 Stat. 33, 15 U. S. C. A. 1011-1015 authorizing and approving the questioned South Carolina Statutes is a proper exercise of Congressional power under Art. 1, Sect. 8, Clause 3 of the Constitution of the United States.

Respectfully submitted,

JOHN M. DANIEL,
*Attorney General,*
M. J. HOUGH,
*Assistant Attorney General,*
T. C. CALLISON,
*Assistant Attorney General,*
*Attorneys for Appellee.*

IN THE

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1945

## No. 707

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A CORPORATION,

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L. GEORGE BENJAMIN, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA,

*Appellee*

## BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

### Statement

After paying the South Carolina premium tax (Code 1942, Sect. 7948, 7949) for many years (the statutes were enacted in 1909 and in 1931) without protest the Prudential Insurance Company brought this action in the South Carolina Supreme Court to enjoin its collection upon the theory that the holding of the United States Supreme Court that the business of insurance was commerce within the meaning of Art. 1 Section 8 Clause 3 of the Federal Constitution in *U. S. v. Southeastern Underwriters*, 322 U. S. 533 invalidated all State regulation and taxation of foreign insurance companies.

The South Carolina Supreme Court held (1) that the Company had failed to show that the tax laws of the state were discriminatory against foreign insurance companies; (2) that any question of the tax burdening interstate commerce is answered by the McCarran-Ferguson Act which Congress was authorized to enact under Art. 1, Sec. 8, Clause 3 of the Constitution and (3) that States may discriminate against foreign corporations without violating the Fourteenth Amendment citing *Lincoln National Ins. Co.* v. *Read*, 89 L. ed. 1250, 1252.

*Prudential* v. *Murphy*, — S. C. —, 35 S. E. (2d) 586.

## I

The Prudential has failed to show that the tax laws of South Carolina do in fact discriminate against it.

*Prudential* v. *Murphy*, — S. C. —, 35 S. E. (2d) 586, 588.
*Interstate Bus Corporation* v. *Blodgett*, 276 U. S. 245.
*General American Tank Co.* v. *Day*, 270 U. S. 367.

## II

The business of many corporations includes both interstate and intrastate activity. Such corporations are subject to regulation and taxation both by Federal and State Governments.

*U. S.* v. *Southeastern Underwriters*, 322 U. S. 534, 548, 562.

## III

Since Sections 7948-7949 of the South Carolina Code place a tax on a purely intrastate activity—the premiums collected on South Carolina business—they do not burden interstate commerce.

"We may grant that a contract of insurance, considered as a thing apart from negotiation and execution does not itself constitute interstate commerce."

*United States* v. *Southeastern Underwriters*, 322 U. S. 534, 546-7.

If the South Carolina tax is considered as levied on the right to do business in the State measured by a percentage of annual premiums on South Carolina business it is a tax on intrastate activity.

*Continental Insurance Co.* vs. *Tennessee*, 311 U. S. 5.

IV

Even if the South Carolina taxes are more onerous on a foreign corporation than on a domestic company, there is no contravention of the Fourteenth Amendment.

*Lincoln National* v. *Read*, — U. S. —; 89 L. Ed. 1250, 1252; 65 S. Ct., 120.

V

Congress has declared that the continued regulation and taxation by the several states of the business of insurance is in the public interest, that silence by the Congress should not be construed as a barrier to State taxation, that the business of insurance is subject to the "laws of the several states which relate to the regulation or taxation of such business" and that no Act of Congress should be construed to invalidate, supersede or impair any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless the Act of Congress specifically relates to the business of insurance.

McCarran-Ferguson Act of Mar. 9, 1945, c. 20 Sect. 1, 59 Stat. 33, 15 U. S. C. A., 1011-1015.

Therefore if the South Carolina premium tax statutes (Code 1942, 7948-7949), are burdens on interstate commerce, Congress has authorized them.

VI

Congress may authorize a State to regulate interstate commerce or to impose burdens upon it.

*International Shoe Co.* v. *Washington* No. 108, 1945 Term decided 3 Dec. 1945, p. 4.
*Southern Pacific* v. *Arizona*, —— U. S. ——, 89 L. ed. 1469, 1474.
*Standard Dredging* v. *Murphy*, 319 U. S. 306, 308.
*Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 155 n.

**Conclusion**

The contention by the Prudential that the decision in *United States* v. *Southeastern Underwriters*, 322 U. S. 534 destroys the power of the State to regulate and tax any activity of a foreign insurance company and specifically invalidates the South Carolina premium tax is based upon a misconception of the scope in that case.

In the Southeastern case the Court was considering the sufficiency of an indictment under the Sherman Act charging two hundred private fire insurance companies and their rating bureau with restraining interstate commerce by fixing and maintaining arbitrary and non-competitive premium rates on fire insurance in six Southeastern States. Admittedly the indictment charged conduct outlawed by the Sherman Act (322 U. S. 536) if it was applicable to the business of fire insurance.

The Court while recognizing that much insurance activity including the Policy Contract was not interstate commerce (322 U. S., 546-7) held that the restraints charged in the

indictment were effected through interstate activity and therefore the defendants were subject to the terms of the Sherman Act.

The Court emphasized the fact that this holding did not mean that State regulatory and tax laws were invalid (322 U. S. 534-5, 546-548). The Court was concerned solely with whether certain phases of insurance activity subjected companies to Federal anti-trust regulation. The holding that these activities did does not mean that South Carolina's premium tax on foreign insurance companies is a violation of Art. 1, Sect. 8, Clause 3 of the Federal Constitution.

It is submitted that all of the questions in the case at bar are settled in accord with the opinion below by *U. S.* v. *Southeastern Underwriters*, 322 U. S. 535, *Lincoln National* v. *Read*, —— U. S. ——, 89 L. ed. 1250 and by the McCarran-Ferguson Act, 59 Stat. 33, 15 U. S. C. A. 1011-1015.

Respectfully submitted,

JOHN M. DANIEL,
*Attorney General;*
M. J. HOUGH,
T. C. CALLISON,
*Assistant Attorneys General,*
*Attorneys for Appellee.*